

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD B. GRANT, ¹	§	
	§	No. 129, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID Nos. 0809015089
	§	0809015090
Plaintiff Below,	§	0810019274
Appellee.	§	

Submitted: July 5, 2011
Decided: September 27, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 27th day of September 2011, upon consideration of the appellant's opening brief and document entitled "motion to compel," the appellee's motion to affirm and answer to the motion to compel, and the appellant's reply to the appellee's answer, it appears to the Court that:

(1) On April 1, 2010, the appellant, Richard B. Grant, pled guilty to four criminal offenses and was sentenced to eight years at Level V, suspended after three years mandatory, for time at Levels IV and III. Grant did not appeal his convictions and sentence to this Court.

¹ The Court, *sua sponte*, has assigned a pseudonym to the appellant. Del. Supr. Ct. R. 7(d).

(2) On September 28, 2010, Grant filed a motion for modification of sentence pursuant to Superior Court Criminal Rule 35(b) (“Rule 35(b)”). By order dated October 11, 2010, the Superior Court denied the motion. Grant did not appeal.

(3) On October 13, 2010, Grant filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). Over the course of the Rule 61 proceeding, Grant also filed a total of two motions seeking the appointment of counsel, three motions to amend, a motion for default judgment, and a motion to compel. By decision dated February 23, 2011, the Superior Court summarily dismissed the motion for postconviction relief and denied the other motions on their merit or as moot.² This appeal followed.³

(4) In the Superior Court postconviction proceeding and now on appeal, Grant claims that he is entitled to a reduction of sentence under title 11, section 4220 of the Delaware Code.⁴ Grant does not challenge his underlying convictions.

(5) The Superior Court’s decision of February 23, 2011 ruled that Grant’s claim to a reduction of sentence was not cognizable under Rule 61⁵ and was

² See Del. Super. Ct. Crim. R. 61(d)(4) (providing for summary dismissal of a postconviction motion if it plainly appears that the movant is not entitled to relief).

³ The record was filed under seal in accordance with the Superior Court’s order of March 21, 2011.

⁴ See Del. Code Ann. tit. 11, § 4220 (Supp. 2010) (governing modification, suspension or reduction of sentence for substantial assistance).

⁵ A postconviction challenge to non-capital sentence is not cognizable under Rule 61. See *Wilson v. State*, 2006 WL 1291369 (Del. Supr.) (quoting Del. Super. Ct. Crim. R. 61(a)(1)).

unavailing under Rule 35(b).⁶ Having carefully considered the parties' positions on appeal, and from the face of the opening brief, the Court has concluded that the Superior Court's February 23, 2011 decision was manifestly correct and the judgment of the Superior Court should be affirmed for the reasons stated in that decision.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁷ The "motion to compel" is moot.⁸

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ The Superior Court correctly concluded that Grant was ineligible for a modification of his mandatory sentence. *See Morris v. State*, 2008 WL 2691041 (Del. Supr.) (citing *State v. Sturgis*, 947 A.2d 1987, 1092 (Del. 2008)).

⁷ The Superior Court record will be returned under seal. *See* Del. Supr. Ct. R. 9(bb) (providing that any part of the record sealed by order of the trial court shall remain sealed unless this Court, for good cause shown, shall authorize its unsealing).

⁸ However, in accordance with Grant's request and consistent with the Superior Court's order of March 21, 2011, the Court will restrict public access to the documents filed in this appeal.